

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

RONALD P. PASSATEMPO, TRUSTEE,)
 On behalf of the Samuel Pietropaolo)
 Irrevocable Trust, SAMUEL PIETROPAOLO,)
 GRANTOR to the Samuel Pietropaolo)
 Irrevocable Trust, and PATRICIA D.)
 PIETROPAOLO, BENEFICIARY of the)
 Samuel Pietropaolo Irrevocable Trust,)

Plaintiffs,)

v.)

Civil Action No.
05-10118-GAO

FREDERICK V. McMENIMEN III, BARRY)
 G. ARMSTRONG, NEW ENGLAND)
 ADVISORY GROUP, LLC, 1717 CAPITAL)
 MANAGEMENT COMPANY, NATIONWIDE)
 PROVIDENT (f/k/a Provident Mutual Life)
 Insurance Company), and NATIONWIDE)
 FINANCIAL SERVICES, INC.,)

Defendants.)

PLAINTIFFS' AMENDED MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 64 of the Federal Rules of Civil Procedure, Plaintiffs Ronald P. Passatempo, Trustee, and Patricia D. Pietropaolo ("Plaintiffs") respectfully submit this Amended Motion For Preliminary Injunction to restrain Defendant Frederick V. McMenimen, III ("Mr. McMenimen") and all those acting in concert with him from conveying, during the pendency of this action and outside of the ordinary course of business, (i) any assets from any account, trust, business venture or other investment vehicle currently under his ownership or control, or of which he is a direct, indirect or contingent beneficiary; (ii) any real property currently under his ownership or control;

and (iii) any other business or personal assets of any kind – except to the extent such property and assets exceed \$900,000 in net value.

In support of their Amended Motion the Plaintiffs submit the accompanying Memorandum of Law, which attaches the Affidavit of Samuel F. Pietropaolo. As further grounds for their Amended Motion, the Plaintiffs state:

1. The Plaintiffs' claims against Mr. McMenimen are likely to succeed on the merits; the Plaintiffs will suffer irreparable injury if Mr. McMenimen is permitted to convey his assets outside the course of his ordinary business such that the Plaintiffs cannot recover the Court's probable judgment against him; the balance of equities weighs in the Plaintiffs' favor; and the public interest would be served by the relief requested in their Amended Motion.

2. The Plaintiffs are compelled to seek the relief requested because Mr. McMenimen's actions evidence intentionally fraudulent behavior that will not be covered by any errors and omissions insurance he may carry; and despite Mr. McMenimen's counsel's representations that he carries sufficient insurance and is otherwise wealthy enough to cover the judgment that will likely be entered against him in this matter, absent the requested relief Mr. McMenimen will not be prevented from transferring his assets beyond the Plaintiffs' reach while this matter is pending.

3. Additionally, this matter has assumed increased urgency which necessitates a hearing forthwith on the preliminary relief requested given Plaintiff Samuel Pietropaolo's ("Mr. Pietropaolo") death on April 1, 2005. With her husband's passing, and having waived receipt of survivor spousal benefits under Mr. Pietropaolo's pension plan (at Mr. McMenimen's direction), Plaintiff Patricia D. Pietropaolo is now in the

unfortunate position of needing the \$500,000 policy which is the subject of this lawsuit and which Mr. McMenimen represented to the Plaintiffs he had secured.

WHEREFORE, the Plaintiffs respectfully request that the Court allow their Amended Motion For Preliminary Injunction and endorse the Proposed Order submitted with their original motion papers (Docket No. 17).

Request For Hearing

The Plaintiffs respectfully request to be heard on their Amended Motion For Preliminary Injunction, as they believe a hearing would be of assistance to the Court. The Plaintiffs submit that it would be most practicable for such hearing to occur in conjunction with the hearing on Mr. McMenimen's Motion To Dismiss, which the Court has set for May 31, 2005.

Respectfully submitted,

Plaintiffs RONALD P. PASSATEMPO,
TRUSTEE, On behalf of the Samuel
Pietropaolo Irrevocable Trust, SAMUEL
PIETROPAOLO, GRANTOR to the Samuel
Pietropaolo Irrevocable Trust, and
PATRICIA D. PIETROPAOLO,
BENEFICIARY of the Samuel Pietropaolo
Irrevocable Trust,

By their counsel:

/s/ David M. Burkoff
Howard M. Cooper (BBO #543842)
David M. Burkoff (BBO #657447)
Todd & Weld LLP
28 State Street
Boston, MA 02109
(617) 720-2626

Dated: May 16, 2005

Local Rule 7.1(A)(2) Certification

I hereby certify that I have conferred with counsel for Defendant Frederick V. McMenimen, III in a good faith attempt to resolve or narrow the issues presented herein.

/s/ David M. Burkoff